



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-03072
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 12, 2015. On October 15, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006 (2006 AG).

Applicant answered the SOR on November 7, 2016, and requested a decision on the record without a hearing. On February 21, 2016, Department Counsel submitted the Government's written case and, on February 22, 2017, sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 6. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on March 24, 2017, and timely submitted her response, to which the Government did not object. Items 1 and 2 are the pleadings in the case. Items 3 through 6 are admitted into

evidence. I admitted into evidence the attachments to Applicant's SOR answer, as Applicant Exhibits (AX) A through C, and her FORM response and the attachments thereto, as AX D through J. The case was assigned to me on October 2, 2017.

On October 16, 2017, I emailed the parties to reopen the record in order to afford Applicant the opportunity to provide an updated FORM response. That email has been marked as Appellate Exhibit (APX) I. Applicant timely submitted a response to which she attached additional evidence that I admitted into evidence, without objection, as AX K through AX N. The Government submitted additional evidence, without objection, that I admitted as GE A, and Applicant's reply thereto as AX O.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the FORM was completed. I conclude that my decision would have been the same under either version.

Findings of Fact³

Applicant, age 56, divorced her husband of 22 years in 2004. She has one adult child. She received her high school diploma in 1975 and took college courses in 2011 and 2012. She served honorably in the U.S. Air Force between 1979 and 1982. She has been steadily employed since April 2015. She has held a DOD security clearance since 2001.

Applicant lived and worked overseas in a combat zone from January 2005 through May 2014, when she was involuntarily laid off. While unemployed from May 2014 through April 2015, she worked part time from August 2014 through April 2015.⁴ Applicant returned to live and work overseas in a non-combat zone in April 2015 and,

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

³ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 2), her SCA (Item 3), and the summary of her July 2015 security clearance interview (Item 5). I considered that Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that she was entitled to make corrections, additions, deletions, and updates to Item 5. Applicant was also informed that she was entitled to object to consideration of Item 5 on the ground that it was not authenticated. Applicant did neither in her response to the FORM. Therefore, I conclude that she has waived any objection to Item 5.

⁴ See also Item 5 at 1.

on a date not specified in the record sometime prior to April 2017, returned to live and work overseas in a combat zone, where she remains through present.⁵

The SOR alleged delinquent federal tax debt for tax years 2008 through 2012 totaling \$45,000 (SOR ¶ 1.h), a \$2,641 state tax lien (SOR ¶ 1.g), five accounts in collection or charged-off status totaling \$17,154 (SOR ¶¶ 1.a through 1.e), and a charged-off account of an unspecified amount (SOR ¶ 1.f).

Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a through 1.e and 1.h. She denied the debts alleged in SOR ¶¶ 1.f and 1.g, which were resolved prior the issuance of the SOR.⁶

Applicant negotiated a payment plan in September 2016 to resolve the debt alleged in SOR ¶ 1.a, and made regular payments pursuant to that plan from October 2016 through January 2017, when it was resolved.⁷

While Applicant has not yet resolved the debt alleged in SOR ¶ 1.b, sometime after the issuance of the SOR, she initiated contact with the original creditor and two collection agencies to obtain information on how to do so. In November 2017, she asserted that she planned to send a check to either the original creditor or one of the collection companies on a date not specified in the record.⁸

Applicant negotiated a payment plan in September 2016 to resolve the debt alleged in SOR ¶ 1.c, and made regular payments pursuant to that plan from October 2016 through January 2017, when it was resolved.⁹

Applicant negotiated a payment plan in September 2016 to resolve the debt alleged in SOR ¶ 1.d, and paid at least one payment pursuant to that plan to reduce the balance to \$2,486 as of November 2016.¹⁰ It was resolved in January 2017.¹¹

Applicant negotiated a payment plan prior to the issuance of the SOR to resolve the debt alleged in SOR ¶ 1.e, and made regular payments for six months pursuant to that plan through August 2016, when it was resolved.¹²

⁵ See also AX D and K.

⁶ AX B, C, and J.

⁷ See also AX E; GE A.

⁸ See also AX K, N, and O.

⁹ See also AX K; GE A.

¹⁰ AE A.

¹¹ AX H and K; GE A.

¹² See also AX I and K; GE A.

Without stating any details or providing corroborating documentary evidence, Applicant suggested for the first time in her SOR answer that a third party may have made unauthorized charges on the accounts alleged in SOR ¶¶ 1.a through 1.d.¹³ However, as noted above, Applicant resolved these accounts, apparently without initiating any type of formal dispute with the creditors.

The amount of delinquent federal taxes alleged in the SOR (¶ 1.h / \$45,000) is based on an estimate that Applicant self-reported in her June 2015 SCA. She attributed it to “back taxes” owed while deployed overseas. She claimed to have set up a payment agreement with the IRS (on a date not specified in the record) prior to completing the SCA, but had “put off” making payments due to “moving often” and lack of a “stable income.”¹⁴

During her July 2015 security clearance interview, Applicant acknowledged that her federal tax debt involved tax years 2008 through 2012, and admitted that she had not only been late paying her federal taxes, but also late filing her federal tax returns. She confirmed that the amount owed was \$45,000 or more. She claimed that she was paying \$250 per month to satisfy the debt, and anticipated that it would take her several years to fully resolve it. Applicant admitted that she largely did not pay attention to her federal taxes while overseas, particularly between 2005 and 2014 while she deployed to a combat zone and did not have regular access to the internet or telephone. She committed to resolving the federal tax debt in the coming years.¹⁵

In her November 2016 SOR answer, Applicant admitted that she owed delinquent federal taxes for tax years 2008 through 2012, but claimed she “did [not] realize” that the federal debt was \$45,000. She also claimed she had set up an electronic payment account to pay it. By April 2017, the account had been set up and Applicant had made at least one attempt to contact the IRS to find out details about what she owed.¹⁶

Applicant hired an attorney in July 2017 to assist her with resolving the federal tax debt, due to what she suspected were errors in the balance owed, including filing status, deductions, and fees for penalties and interest. As of October 2017, her attorney was still working to resolve it. The IRS notified Applicant that she also owed approximately \$2,500 for tax year 2016.¹⁷ Applicant did not provide any corroborating documentary evidence of any payments she made to the IRS either before or after the issuance of the SOR, or of her efforts to resolve the suspected errors.

¹³ See also AX O.

¹⁴ GE 3 at 38.

¹⁵ Item 5 at 6.

¹⁶ AX D.

¹⁷ AX K.

While the record is silent as to Applicant's income history, in her SCA, she attributed her non-tax debts to an unspecified period when she accepted a 52% reduction in pay in order to keep a job during one of her re-deployments; her unexpected May 2014 layoff and the underemployment and unemployment period that followed, during which time she did not receive unemployment compensation; an unspecified amount of money she spent to fix damage to her home in 2014; and an unspecified amount of money she spent for an unspecified period of time supporting her son who had also been laid off.¹⁸ Her credit reports corroborate that the non-tax debts were incurred during the period between 2014 and 2015.¹⁹ During her 2015 interview, she acknowledged that not living within her means or paying attention to her finances for several years also contributed to her financial indebtedness.²⁰

Applicant averred that with the extra income she will earn working in a combat zone, she will have the means to repay her federal taxes and otherwise maintain her finances. She has not had any financial counseling.²¹ Applicant's recent credit report reveals that she is managing her current finances responsibly, and has not incurred any new delinquent debts.²²

Policies

"[N]o one has a 'right' to a security clearance."²³ As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information."²⁴ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."²⁵

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

¹⁸ Item 3 at 40; Item 5 at 3.

¹⁹ Items 4 and 6.

²⁰ Item 5 at 6.

²¹ Item 5 at 9.

²² See also AX D, K and O; GE A.

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁴ *Egan* at 527.S

²⁵ EO 10865 § 2.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”²⁶ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.²⁷ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁸ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁹ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.³⁰ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.³¹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”³² “[S]ecurity clearance determinations should err, if they must, on the side of denials.”³³

²⁶ EO 10865 § 7.

²⁷ See *Egan*, 484 U.S. at 531.

²⁸ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁹ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

³⁰ Directive ¶ E3.1.15.

³¹ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³² ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³³ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Analysis

The concern under Guideline F (Financial Considerations) is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.³⁴

Applicant's admissions and her credit reports establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

³⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not fully established. Given the circumstances under which she incurred the debt alleged in SOR ¶ 1.b, and the reasonable steps that she has taken to pay or otherwise resolve it, I conclude that her actions with respect to resolving her other non-tax debts demonstrate that she will follow through with paying it as promised. However, there remains substantial, unresolved federal tax debt (SOR ¶ 1.h).

AG ¶ 20(b) is not fully established. Despite the lack of details in the record, I find that Applicant's 2014 layoff, and the unexpected expenses associated with her home repairs and son's layoff were circumstances beyond her control. Her non-tax debts were attributable to those circumstances, and she acted responsibly to resolve them. While I considered her overseas location, primarily in a combat zone, between 2005 and 2014, Applicant did not establish that circumstances beyond her control largely contributed to the accumulation of federal tax debt. However, to the extent that all or part of it is deemed so, she did not meet her burden to establish that she acted responsibly to address it.

AG ¶ 20(d) is not fully established. AG ¶ 20(d) is established as to the debts alleged in SOR ¶¶ 1.a through 1.g. However, Applicant did not meet her burden to establish AG ¶ 20(d) as to her federal tax debt.

AG ¶ 20(e) is not established. While Applicant articulated a reasonable basis to dispute at least some portion of her federal tax debt, she did not provide any documentary proof to substantiate her dispute or sufficient evidence of actions taken to resolve the issue.

AG ¶ 20(g) is not established. I credit Applicant with communicating with the IRS, establishing an electronic payment account to pay her federal taxes, and hiring any attorney to help her sort through suspected errors in the balance owed on her federal tax debt. However, she did not provide any corroborating documentation to show that she established a payment plan or made any payments to the IRS.

I considered the progress that Applicant has made in tackling her delinquent debts, and the fact that she is not required to be debt-free in order to qualify for a security clearance.³⁵ I also considered that Applicant incurred delinquent taxes during a

³⁵ ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

period in which she resided primarily overseas in a combat zone. However, Applicant failed to timely pay her federal taxes over an extended number of years, and her federal tax debt remains unresolved five years later. Moreover, she failed to provide sufficient evidence to establish that she acted responsibly to address it, especially during the period when she was not located in a combat zone. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by her failure to pay delinquent federal taxes. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.g: **For Applicant**

Subparagraph 1.h: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge